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3 UNITED STATES DISTRICT COURT

## 4 DISTRICT OF NEVADA

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6 NICHOLAS MCDANIEL,

Case No. 3:24-cv-00074-MMD-CLB

7 Petitioner,

ORDER

8 v.

9 TIMOTHY GARRETT, *et al.*,10 Respondents.  
11

12 Petitioner Nicholas McDaniel initiated this action by filing a petition for writ of  
13 habeas corpus under 28 U.S.C. § 2254. (ECF Nos. 1-1, 7.) He subsequently filed a  
14 protective first amended petition. (ECF No. 16 (“FAC”).) This matter is before the Court  
15 on his motion for leave to file a second amended petition (“SAC”) for writ of habeas  
16 corpus. (ECF No. 20 (“Motion”).) Respondents filed a non-opposition. (ECF No. 22.)

17 As required by LR 15-1(a), Petitioner submitted with his Motion a SAC. (ECF No.  
18 21-1.) Petitioner requests leave to file the SAC to update Ground 1(A) of the FAC. (*Id.* at  
19 2.) In Ground 1(A), he alleges ineffective assistance of counsel for failing to investigate  
20 the victim’s prior false accusation against him. (*Id.*) The Motion states that, at the time he  
21 filed his protective FAC, his investigator had obtained information from witnesses but had  
22 not yet obtained their signed declarations. (*Id.*) He has since obtained the signed  
23 declarations and wishes to integrate into a SAC information contained in those  
24 declarations including information that was not alleged in the FAC. (*Id.*) As there is no  
25 opposition to the motion, the Court finds there is good cause for Petitioner to file a SAC.  
26 This order, however, does not intend to convey any opinion whether the Court may  
27 entertain the declarations or information contained in them during its consideration of this  
28 matter. Moreover, the order does not affect in any manner the operation of the statute of

1 limitations in this case, and the Court does not intend this order to convey any opinion  
2 whatsoever about the expiration of the limitation period. Finally, this order does not  
3 convey any opinion concerning exhaustion or procedural default of any claims raised by  
4 the SAC.

5 It is therefore ordered that Petitioner Nicholas McDaniel's motion for leave to file a  
6 second amended petition for writ of habeas corpus (ECF No. 20) is granted.

7 It is further ordered that the Clerk of Court is directed to file the second amended  
8 petition (ECF No. 21-1) with the filing date of March 24, 2025.

9 It is further ordered that Respondents will have until May 23, 2025, to file a  
10 response to the second amended petition.

11 It is further ordered that in all other respects, the schedule for further proceedings  
12 set forth in the order entered on May 22, 2024 (ECF No. 10) remains in effect.

13 DATED THIS 21<sup>st</sup> Day of March 2025.

A handwritten signature in blue ink, appearing to read 'Miranda M. Du', is written over a horizontal line.

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15 MIRANDA M. DU  
16 UNITED STATES DISTRICT JUDGE  
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